

## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number

Q93023

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  
on \_\_\_\_\_

Application Number  
10/567,360

Filed  
September 25, 2006

Confirmation Number: 9859  
First Named Inventor  
Misa HANITA

Signature  
Typed or  
printed name

Art Unit  
1782

Examiner  
WOOD, ELLEN S

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

- ☒ The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

### CORRESPONDENCE ADDRESS

Direct all correspondence to the address for SUGHRUE MION, PLLC filed under the Customer Number listed below:

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

I am the

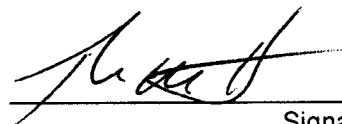
☐ applicant/inventor.

☐ assignee of record of the entire interest. See 37 CFR 3.71.

☐ Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.  
Registration number 64,676

☐ attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34 \_\_\_\_\_



Signature

Thomas M. Hunter

Typed or printed name

(202) 293-7060

Telephone number

June 15, 2011

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.

☒ \*Total of 1 form is submitted.

**PATENT APPLICATION**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of

Docket No: Q93023

Misa HANITA, et al.

Appln. No.: 10/567,360

Group Art Unit: 1782

Confirmation No.: 9859

Examiner: WOOD, ELLEN S

Filed: September 25, 2006

For: PACKING CONTAINER

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

**MAIL STOP AF - PATENTS**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated March 17, 2011, Appellants file this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal.

Appellants turn now to the rejections at issue: Claims 1 and 3-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over JP 2002-241608 to Kikuchi et al. in view of U.S. Patent Application Publication No. 2003/0130405 to Takagi et al.

Appellants respectfully traverse the rejection for the reasons of record and for the following reasons.

Appellants respectfully submit that even if the cited references are combined, the presently claimed invention would not be obtained. More particularly, the rejection should be withdrawn because the combination of Kikuchi and Takagi does not teach or suggest a ratio N/M of not smaller than  $20\text{ cm}^{-1}$  as required by Claim 1.

The oxygen absorbing functional component of the present invention is finely dispersed in order to increase the whole surface area and thereby improve the oxygen absorbing property and gas-barrier property from a time when the content is first filled. The effect of attaining the oxygen-absorbing property from the beginning of filling the container is achieved by selecting an average particle size of the island portions to be not larger than 3.5  $\mu\text{m}$  and by setting a ratio,  $N/M$ , of the total surface area  $N$  of the island portions and the volume  $M$  of the packing container to be not smaller than 20  $\text{cm}^{-1}$ . The effect of attaining the oxygen-absorbing property from the beginning of filling the container is not achieved by the resin composition of Kikuchi that simply has an islands-in-sea structure.

Takagi discloses an islands-in-sea structure, wherein carbon black is present in the amorphous thermoplastic resin that forms island portions, and hollow carbon fibrils are present in the crystalline thermoplastic resin that forms the sea portion, to thereby attain mechanical strength and heat resistance, as well as electric conductivity and antistatic property. Takagi further discloses that the island phase has a long diameter of 0.1 to 10  $\mu\text{m}$ , and the island portion has a weight average particle size of not smaller than 3  $\mu\text{m}$ . Takagi does not at all disclose or suggest forming many small islands in order to increase the total surface area of the island portions so that the ratio  $N/M$  exceeds 20.

In this regard, the Examiner considered that the presently claimed ratio of the total surface area of the island portions and the volume of the packing container being not smaller than 20  $\text{cm}^{-1}$  is a result effective variable. However, the Examiner then takes the position, without support in the cited art that "...it would have been obvious to one of ordinary skill in the

art at the time the invention was made to optimize the ratio (N/M) in the oxygen absorbing layers.” See page 3 of the Office Action dated March 17, 2011.

The Examiner’s position lacks merit.

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. See MPEP §2144.05. In this regard, there is nothing in the cited art which recognizes the ratio, N/M, of the total surface area N of the island portions and the volume M of the packing container, as a result effective variable.

More particularly, Kikuchi and Takagi have no disclosure with respect to forming many small islands with a particular ratio N/M at all, let alone the conditions that a skilled artisan would need to optimize so as to achieve the invention of present Claim 1. Thus, contrary to the Examiner’s position, it would not have been obvious to optimize the ratio (N/M) in the oxygen absorbing layers, given the disclosures of Kikuchi and Takagi.

For the foregoing reasons, it is respectfully submitted that Claims 1 and 3-16 are patentable over the cited art.

Accordingly, Appellants respectfully request the reconsideration and withdrawal of the foregoing rejection.

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Respectfully submitted,



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Date: June 15, 2011